

ESSAY

International Postal Governance: Avenues for Reform

ROSS MARCHAND*

The international mail delivery system relies on an intergovernmental organization known as the Universal Postal Union to set cross-border delivery fees and adjudicate postage disputes. Recently, this organization has come under fire from member-nations for allegedly setting uneconomical fees, excluding the private sector from its deliberations, and responding slowly to international developments. In this Essay, I explore the origins of this organization and document how deep-seated governance issues have led to suboptimal outcomes in the international mailing market. Finally, I offer recommendations as to how the Union could better accommodate stakeholders and respond more flexibly to changing market dynamics.

* J.D. 2023, University of Virginia School of Law; MA, 2016, George Mason University economics program; BA, 2014, University of Maryland. Second-place winner of the VJIL Spring 2021 Symposium Essay Contest. I would particularly like to thank David Williams for introducing me to the exciting world of postal policy and encouraging me to think deeply about the subject. I would also like to thank my wonderful fiancée for her continuing love and support through my schooling and research endeavors. Finally, I'd like to thank the United States Postal Service for their transparency and timeliness in providing useful research information.

I. INTRODUCTION.....	669
II. HISTORY AND OVERVIEW OF THE TERMINAL DUES SYSTEM	669
III. THE UPU'S GOVERNANCE STRUCTURE AND ITS NEED FOR REFORM.....	671
IV. RECOMMENDATIONS FOR REFORM: INCREASED TRANSPARENCY AND PRIVATE SECTOR PARTICIPATION.....	673

I. INTRODUCTION

As many American consumers and producers have likely realized, manufacturers based in developing nations such as China have few difficulties selling and shipping their products to the U.S. Low labor costs and significant manufacturing subsidies from originating nations have resulted in a competitive advantage over U.S. producers. But one oft-overlooked factor in this trade equilibrium is the international postal system managed by the Universal Postal Union (UPU) and resulting postage subsidies that benefit developing nations such as China.

Established in 1874 and incorporated into the United Nations as a specialized agency in 1948, the UPU manages a terminal dues system in which nations pay other nations to deliver cross-border mail.¹ While previous analyses have catalogued and described the economic impacts of the terminal dues model, few papers have examined the interaction between the UPU's governing model and economic outcomes. In this Paper, I examine how the terminal dues system operates, and how the structure of the UPU leads to persistent problems in postal governance. I then offer recommendations to improve the governance of the UPU and create a more resilient global postal order.

II. HISTORY AND OVERVIEW OF THE TERMINAL DUES SYSTEM

Prior to the creation of the UPU, nations managed international mail flows via bilateral agreements subject to constant revisions and conflict. If nations were unable to agree on bilateral treaty terms, mail would have to be sent from the origin country to the destination country via third-party nations with whom both countries had a bilateral agreement. This haphazard international system entailed high transaction costs and prompted leading powers in the nineteenth century including the United States and Germany to devise a consistent, predictable international framework.

As a result of the Treaty of Bern in 1874, the General Postal Union (the precursor to the UPU) was established and twenty-one signatory countries agreed to a uniform delivery rate for international mail.² In addition, the treaty stipulated that postage paid on outbound international mail would be kept by the country from where the mail originated.³ While this put destination countries at a financial disadvantage, the signatory countries

1. *History*, UNIVERSAL POSTAL UNION, <https://tinyurl.com/3h4th9ae> (last visited Mar. 7, 2021).

2. Benjamin Akzin, *Membership in the Universal Postal Union*, 27 AM. J. INT'L L. 651, 652-54 (1933) (discussing the formation of the UPU).

3. *Id.*

assumed that most mail would generate return mail and thus revenue would be evenly distributed between countries.

This assumption, however, turned out to be untrue. Italy, for instance, routinely delivered significantly more international mail than they sent out to other Treaty of Bern signatories, resulting in the chronic underfunding of the Italian postal system.⁴ To address these complaints and make the postal union more responsive to the demands of net-importing developing nations, the UPU introduced a terminal dues system in 1969.

Under the new system, a country that delivered more mail to another country than vice versa would have to compensate that recipient country for the mail trade imbalance. The dues were based on the weight difference between the mail imported and exported between the two nations. Net-exporting countries were required to subsidize the posts of net-importing nations, with compensation directly tied to the volume of the trade discrepancy. However, as logistics writer David Morris notes, “[T]he terminal dues system quickly created another problem . . . Postal services with lower costs soon received more in terminal dues on inward international mail than it cost them to deliver it. From benefiting net exporters of mail, the UPU had begun to benefit the lowest-cost importers—including both many developing nations and low-cost industrialized nations like the U.S. and the United Kingdom.”⁵

These challenges were exacerbated by successive changes to the UPU system. In 1999, the international body voted to fundamentally restructure terminal dues and move toward a system of different rates based on countries’ wealth levels. Based on a variety of measurements including Gross National Income (GNI) per capita, the UPU divided nations into “transition” countries (e.g. India, China) and “target” countries (e.g. U.S., Germany). Under this system, transition countries pay target nations {Consider changing "developing" to "transition" and "developed" to "target" if that is what UPU calls them} far less per kilogram of delivered mail than vice versa regardless of underlying delivery costs. The dues differential amounts to a significant subsidy from target to transition nations; postal analyst Jim Campbell notes, “the discount from equivalent domestic postage for such mail—the subsidy granted DCs [developing countries] by ICs [industrialized countries]—works out to 25 percent, although this is probably substantially understated.”⁶

This rate discrepancy has led to charges of unfairness, as posts such as the United States Postal Service (USPS)—which lost \$9.2 billion in fiscal

4. David Z. Morris, *The International Postal System is Profoundly Broken — And Nobody is Paying Attention*, PAC. STANDARD MAG. (Dec. 14, 2015), tinyurl.com/pvz8amuz.

5. *Id.*

6. U.S. DEP’T OF STATE, REPLY OF JIM CAMPBELL TO U.S. POSTAL SERVICE COMMENTS ON TERMINAL DUES PROPOSALS 8 (2015), tinyurl.com/zy22e8.

year 2020 and more than \$80 billion since 2007—effectively subsidize organizations such as the China Post with annual profits exceeding \$4 billion.⁷ Estimates suggest that the USPS loses approximately \$70 million annually from low terminal dues on inbound mail paid by transition countries.⁸ In addition, the terminal dues system makes it more difficult for exporters in target nations to sell their goods to consumers in transition nations, though there are few quantitative estimates of resulting losses/distortions.

In response to these issues, the Trump administration threatened to withdraw from the UPU unless the U.S. was allowed to charge higher terminal dues on inbound mail from transition nations. As part of a compromise brokered during the UPU's 2019 "Extraordinary Congress," the U.S. and other member-nations gained the right to self-declare international postage rates contingent on a \$40 million annual payment to the UPU.⁹ The self-declaration option is available to member-nations as of March 2021, though it remains to be seen how it will impact the international postal market. Should target nations opt to widely self-declare their rates for inbound mail, the international postage pricing system would break down and revert to the pre-Treaty of Bern status-quo in which bilateral treaties governed cross-border mailing arrangements. Alternatively, target nations may largely neglect to self-declare rates and continue to adhere to current terminal dues due to perceived political risks and bilateral transaction costs.

The lack of satisfactory choices for these nations reflects the UPU's rigid governance structure and inability to accommodate a rapidly changing international mailing market.

III. THE UPU'S GOVERNANCE STRUCTURE AND ITS NEED FOR REFORM

Under the organization's current structure, the UPU decides on terminal dues once every four years. A proposed amendment to the UPU Convention requires majority approval, with each participating nation

7. U.S. POSTAL SERV., U.S. POSTAL SERVICE REPORTS FISCAL YEAR 2020 RESULTS (2020), <https://about.usps.com/newsroom/national-releases/2020/1113-usps-reports-fiscal-year-2020-results.htm>.

8. OFF. OF THE INSPECTOR GEN., U.S. POSTAL SERV., RARC-WP-16-003, TERMINAL DUES IN THE AGE OF ECOMMERCE (2015), <https://www.uspsoig.gov/sites/default/files/document-library-files/2015/RARC-WP-16-003.pdf> [hereinafter *RARC Report*].

9. Kayla Tausche, *Global Postal Group Reaches Deal to Avoid U.S. Withdrawal*, CNBC (Sept. 25, 2019, 11:54 AM), <https://tinyurl.com/kbtfs5rf>.

entitled to one vote.¹⁰ This “one nation, one vote” system effectively excludes individual companies, who have increasingly competed with nationalized posts to deliver packages and letter mail (in limited circumstances) to consumers. Private providers are effectively shut out of the UPU’s terminal dues system and are therefore put at a disadvantage compared to national carriers. The USPS inspector general notes, “Private sector operators cannot directly access the often lower UPU terminal dues for cross-border shipping, which are accessible only to designated national postal operators. As a result, in countries paying low terminal dues, private sector companies cannot always compete on cross-border prices with the UPU member post.”¹¹

Private postal carriers are likely to have prices more reflective of underlying delivery costs than national posts, since governmental posts often receive direct or implicit taxpayer subsidies and artificially underprice certain segments of their markets. For instance, the USPS has long been suspected of using first-class mail (i.e. letter mail) revenues to cross-subsidize “competitive products” such as packages, and cost attribution estimates seem to confirm that view.¹² National posts, however, refuse to divulge their pricing methodologies which make it difficult for the UPU to arrive at economically-appropriate terminal dues rates. Because of the exclusion of the private postal market and the opaqueness of economic modeling by national posts, it is little surprise that the UPU resorts to arbitrary criteria such as GNI per capita to determine terminal dues.¹³ As a result, the UPU’s current institutional framework complicates the organization’s long-standing aim to minimize distortions and inefficiencies in the international postage market.

Additionally, the UPU’s infrequent meeting schedule results in terminal dues that do not reflect the latest developments in the global shipping and logistics industry. Package volume as a percentage of overall mail volume has increased significantly between Postal Union Congresses, and the number of parcels in global circulation has roughly tripled from 2013 to 2019.¹⁴ In ordinary market contexts, prices can respond quickly to changes in market conditions and ensure that resources are efficiently allocated. But

10. Eliot Kim, *Withdrawal from the Universal Postal Union: A Guide for the Perplexed*, LAWFARE (Oct. 31, 2018, 2:31 PM), <https://www.lawfareblog.com/withdrawal-universal-postal-union-guide-perplexed>.

11. RARC Report, *supra* note 8.

12. Ross Marchand, *Time for the Postal Service to Open their Books*, CONSUMER POSTAL COUNCIL (May 6, 2019), <https://www.postalconsumers.org/time-for-the-postal-service-to-open-their-books/>.

13. U.S. GOV’T ACCOUNTABILITY OFF., GAO-18-112, INTERNATIONAL MAIL: INFORMATION ON CHANGES AND ALTERNATIVES TO THE TERMINAL DUES SYSTEM 6 (2017).

14. *Pitney Bowes Parcel Shipping Index*, PITNEY BOWES, <https://www.pitneybowes.com/content/dam/pitneybowes/us/en/shipping-index/pb-parcel-shipping-infographic-2020-final-hires-rev2.pdf> (last visited Mar. 7, 2021).

as a result of the inability of postage prices and terminal dues to reflect the relatively high delivery costs of packages, the gap between costs and revenues is widening for national posts.

IV. RECOMMENDATIONS FOR REFORM: INCREASED TRANSPARENCY AND PRIVATE SECTOR PARTICIPATION

The costs of maintaining the status-quo will only grow over time as the international mailing market inevitably deepens and becomes more complex. Furthermore, developed nations' foregone revenue will increase over time given the increased market share of packages in the mailstream. As a necessary first step toward aligning terminal dues with delivery costs, the Universal Postal Union must insist that participants publicly disclose the cost assumptions used in establishing prices. For instance, the USPS should be required to annually report inventory flows and publish cost attribution estimates for equipment such as handheld scanners and trucks. The UPU, member-states, and independent analysts must be able to examine national posts' pricing methodologies in order to move toward economical pricing. The UPU has multiple tools at its disposal for ensuring compliance with transparency requirements, including temporarily suspending membership and withholding mail security and administrative cooperation.

In addition to increased transparency, the UPU should examine ways to include private sector participants in its deliberations. As an interim measure, individual companies could be given observer status and UPU proposals could be subject to a private sector consultation period. This approach, not dissimilar to the federal regulatory process in most developed nations, would allow the international mail system to confront market considerations currently absent from UPU deliberations. Over the long term, the UPU could study the feasibility of granting private shippers limited voting status based on factors such as volume and capitalization. The organization, however, must be careful not to tip the balance in favor of large companies that already have political clout. To balance private sector voices, the UPU could also strive to select small shippers for voting status.

Finally, the UPU should meet more frequently than they currently do. Having an annual congress instead of a congress every four years would allow the organization to address critical market issues and respond more aptly to market forces.

None of these changes in isolation would prove sufficient for the UPU to correct course. But taken together, these reforms could reinvigorate global postal governance and end the broken status-quo.

* * *